

**77-16a-102 Jury instructions.**

- (1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall instruct the jury that it may find the defendant:
  - (a) guilty;
  - (b) guilty with a mental illness at the time of the offense;
  - (c) guilty of a lesser offense;
  - (d) guilty of a lesser offense with a mental illness at the time of the offense;
  - (e) not guilty by reason of insanity; or
  - (f) not guilty.
- (2)
  - (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or asserts special mitigation reducing the level of an offense pursuant to Subsection 76-5-205.5(1)(a), or when the evidence raises the issue and either party requests the instruction, the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt of any charged offense or lesser included offense, it shall also return a special verdict indicating whether it finds that the defendant had a mental illness at the time of the offense.
  - (b) If the jury finds the defendant guilty of the charged offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty with a mental illness at the time of the offense."
  - (c) If the jury finds the defendant guilty of a lesser offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty of a lesser offense with a mental illness at the time of the offense."
  - (d) If the jury finds the defendant guilty of the charged offense or a lesser included offense and does not find that the defendant had a mental illness at the time of the offense, the jury shall return a verdict of "guilty" of that offense, along with the special verdict form indicating that the jury did not find that the defendant had a mental illness at the time of the offense.
  - (e) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.
- (3) In determining whether a defendant should be found guilty with a mental illness at the time of the offense, the jury shall be instructed that the standard of proof applicable to a finding of mental illness is by a preponderance of the evidence. The jury shall also be instructed that the standard of preponderance of the evidence does not apply to the elements establishing a defendant's guilt, and that the proof of the elements establishing a defendant's guilt of any offense must be proven beyond a reasonable doubt.
- (4)
  - (a) When special mitigation based on extreme emotional distress is at issue pursuant to Subsection 76-5-205.5(1)(b), the jury shall, in addition to its general verdict, return a special verdict.
  - (b) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.

Amended by Chapter 366, 2011 General Session